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**Testimony of Michael K. Courtney, Senior Assistant Public Defender
R. B. 6709, An Act Concerning the Department of Correction
Judiciary Committee Public Hearing – March 24, 2009**

The Office of Chief Public Defender is opposed to the proposed language as contained in section 8 (c) of ***R. B. 6709, An Act Concerning the Department of Correction***. This section is specifically directed at voiding an outstanding ruling by The Freedom of Information Commission which orders the Department of Correction to disclose certain details with regard to the execution of Michael Ross in 2005, including the identity of a private contractor or contractor(s) engaged by the Department of Corrections, (D.O.C.) to conduct and/or supervise the execution and paid with State funds. (See, *Michael K. Courtney et al vs. Commissioner*, Docket # FIC2007-451, Final Decision dated August 13, 2008, appended hereto.)

The Department of Correction has appealed that ruling and the appeal is currently pending in New Britain Superior Court. In 1999, the legislature added § 1-210(b)(18), along with C.G.S. §§ 1-210(c) and 1-212(f) to the Freedom of Information Statutes, via *Public Act No. 99-156, An Act Exempting Certain Department of Correction Records from Disclosure under the Freedom of Information Act*. This Public Act curtailed FOI access to information that D.O.C. viewed as security-sensitive, i.e., information that could threaten the safety of inmates, staff, and the general public by facilitating disturbances at or escapes from correctional institutions. This provision gave the D.O.C. the right to withhold security sensitive information upon a demonstration that the material is in fact security sensitive, while allowing the FOIC oversight and further allowing the D.O.C. to appeal any adverse decision.

As a result, there is no need for this special legislation aimed at shielding the D.O.C. from any examination of a four year old execution. The people of Connecticut have a right to know how the state's first execution in some forty odd years was conducted, and whether the procedures utilized were consistent with state and federal constitutional protections. There are dozens of examples of documented botched executions in the post Furman era, see <http://www.deathpenaltyinfo.org/some-examples-post-furman-botched-executions>, last visited 3/23/09. In fact, an examination of the autopsy report of Michael Ross shows that the executioner(s) required five separate attempts to establish just two intravenous lines.

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The legislature has already granted the D.O.C. significant exemption from the disclosure obligations placed upon every other state agency. If the D.O.C. can demonstrate that these materials will somehow impact on the overall security of any state correctional facility, then surely no court will order it disclosed. This bill, as drafted, allows the D.O.C. complete discretion to refuse to disclose identifying information about an unlimited number of people and personnel that the D.O.C. decides are "perform(ing) the duty of executing sentences ...of...death".

Lastly, if this committee were to support this legislation, the Office of Chief Public Defender would request that at a minimum, the phrase "except upon order of a court of competent jurisdiction" be inserted at the end of line 235.